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DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2014-0S-0062]

National Environmental Policy Act Implementation Procedures

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Proposed guidance with a request for comment.

SUMMARY: The Missile Defense Agency (MDA or the Agency) plans to issue procedures to implement the National Environmental Policy Act (NEPA), Executive Order (E.O.) 11514, and Council on Environmental Quality (CEQ) regulations on implementing NEPA.. Pursuant to CEQ regulations, the MDA is soliciting comments on its proposed procedures.

DATES: MDA is providing a 30-day review period. Comments must be received by: [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and title, using the *Federal eRulemaking Portal*: <http://www.regulations.gov>. All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Sorrells, Chief,

Environmental Management, at (256) 450-2677 or by e-mail at eric.sorrells@mda.mil.

SUPPLEMENTARY INFORMATION: MDA is responsible for developing, testing, and fielding an integrated, layered, Ballistic Missile Defense System (BMDS) to defend the United States, its deployed forces, allies, and friends against all ranges of enemy ballistic missiles in all phases of flight. Using complementary interceptors; land-, sea-, air-, and space-based sensors; and battle management, command and control, and communications systems, the planned BMDS is intended to engage and negate all classes and ranges of ballistic missile threats.

MDA and its predecessor organizations prepared several programmatic BMDS National Environmental Policy Act (NEPA) documents to analyze the environmental impacts of its actions. In addition, MDA has prepared or been a cooperating agency for over 70 environmental assessments (EAs) or environmental impact statements (EISs) for specific program activities. These NEPA documents cover activities including research and development, site preparation and construction, maintenance and sustainment, manufacture of test articles (prototypes), test and evaluation, fielding of missile defense systems and components, and the ultimate decommissioning and disposal or transfer of BMDS components and assets at many DoD installations, other agency sites, and industrial sites around the globe. Additionally, MDA has carefully considered over 200 records of environmental consideration (RECs)/records of categorical exclusion/Air Force Form 813s documenting the use of the respective military Service's Categorical Exclusions (CATEXs) for minor actions occurring on host installations or ranges.

As a DoD agency, the MDA does not own real property. Because most MDA actions typically occur on host military service installations or ranges, or other Federal

agency properties, MDA has historically relied upon our host installation or Federal agency's NEPA implementation, including their implementing procedures and CATEXs, to address the environmental impacts of MDA actions.

With the issuance of CEQ guidance "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act" (2010) and after consulting informally with the CEQ, MDA determined the need to establish NEPA implementing procedures and CATEXs specific to MDA projects and actions. The information that MDA assembled while developing our CATEXs is described in the "Administrative Record for Missile Defense Agency Proposed Categorical Exclusions" and is available on the MDA web site at:

http://www.mda.mil/news/environmental_reports.html.

The proposed CATEXs describe the categories of actions that MDA determined will not normally have a potential significant effect, individually or cumulatively on the human environment; and together with the proposed implementing procedures will guide MDA organizations in carrying out the procedural requirements of NEPA.

MDA has determined that issuing these procedures and CATEXs does not constitute a regulatory action or "rule making" as defined by Executive Order 12866 and the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), which would have required additional review by the Office of Management and Budget.

The text of the complete proposed Guidance document appears below.

Dated: May 1, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.

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THE NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES FOR THE MISSILE DEFENSE AGENCY

1. Purpose.

These procedures implement the provisions of the NEPA, 42 U.S.C. 4321 *et seq.*

They adopt and supplement the CEQ regulations implementing NEPA, 40 CFR parts

1500–1508, by establishing policy, directing environmental planning, and assigning responsibilities in the MDA to prepare, review, and approve environmental documents that comply with NEPA.

2. Scope.

The policies and responsibilities in these procedures apply to activities conducted by MDA and its executing agents in the United States, its possessions, and territories. The potential environmental effects of MDA proposed activities in foreign countries and global commons will be considered in accordance with Executive Order 12114, “Environmental Effects Abroad of Major Federal Activities,” DoD directives, host nation final governing standards, overseas environmental baseline guidance documents, status of forces agreements, and other international agreements.

3. Policy.

(a) It is MDA policy regarding NEPA, consistent with our mission and regulations and the environmental laws and regulations of the United States, to: (1) start the NEPA process at the earliest possible time as an effective decision-making tool while evaluating a proposed action; (2) develop and carefully consider a range of reasonable alternatives to achieve the proposed actions; (3) write environmental analyses in plain English; and (4) to the maximum extent practical: (i) include pollution prevention alternatives, (ii) consider sustainable transportation, greenhouse gas emissions, and energy choices, and (iii) ensure that, consistent with other national policies and national security requirements, we use practical means and measures to protect, restore, and enhance the quality of the environment and mitigate adverse consequences. MDA lacks projects or programs where actions are planned by private applicants or other non-Federal

entities. Therefore, these procedures do not include the provision (as specified at 40 CFR 1501.2(d)) to account for actions planned by private applicants or other non-Federal entities.

(b) MDA will promote efficiency in its NEPA process through: (1) being aware and involved with the MDA project advocate (or MDA proponent) in the NEPA process; (2) using programmatic analyses and “tiering,” where appropriate, to make sure that decisions are made at the right levels, eliminating repetitive discussion, considering cumulative effects, and focusing on issues that are important and appropriate for discussion at each level; (3) using scoping and public involvement processes to ensure the analysis of issues of interest to the public and/or important to decision making; (4) eliminating needless paperwork by focusing documents on the major environmental issues affecting those decisions, including the use of adoption or incorporation by reference of previous, relevant NEPA analyses prepared by other agencies; (5) early integration of the NEPA process into all aspects of MDA planning to prevent disruption in decision making; (6) partnering or coordinating with agencies, organizations, and individuals whose specialized expertise improves the NEPA process; (7) clear and concise communication of data, documentation, and information; and (8) execution of the NEPA compliance process within the framework of the MDA’s Environmental Management System.

(c) MDA will periodically (at least every seven years) review the effectiveness of its NEPA program and these implementing procedures, the appropriateness and usefulness of our categorical exclusions (CATEXs), the accuracy of predicted findings of no significant impact, the effectiveness of mitigation, the ramifications of actions both

individually and cumulatively, and the currency of the BMDS 2008 Programmatic Environmental Impact Statement.

(d) MDA will post NEPA implementing procedures, CATEXs, and summary information on our use of CATEXs for proposed actions on its public website.

4. Responsibilities.

(a) The MDA Director has overall authority to ensure MDA activities comply with NEPA and has final approval authority regarding EIS records of decision (RODs).

(b) The Agency Environmental Executive (EE) acts as the principal MDA advisor on NEPA-related requirements. The EE will: (1) ensure NEPA compliance of MDA activities in accordance with MDA NEPA implementing procedures and other applicable NEPA guidance and regulations; (2) coordinate with MDA stakeholders for NEPA issues regarding program/element activities; (3) provide intra-agency and inter-agency liaison and coordination on NEPA-related matters; and (4) have signature authority for EA findings of no significant impact (FONSI).

(c) The Chief, Environmental Management will: (1) educate and train MDA staff to implement NEPA; (2) coordinate with MDA's EE to maintain a record of the MDA's environmental activities and advance the national environmental policy articulated in NEPA, other Federal statutes, regulations, and Executive Orders; (3) prepare MDA NEPA reviews; (4) submit Federal Register (FR) notices for draft and final NEPA documents (as appropriate); (5) represent the MDA in NEPA-related matters with outside groups; (6) ensure applicable NEPA requirements are met on schedule during planning for any MDA action; (7) coordinate NEPA compliance actions at the proposal stage with

MDA organizations; (8) ensure required NEPA mitigation measures are performed; and (9) ensure all documents being prepared by MDA are properly cleared for public release prior to the release or posting of the documents on any publicly accessible website or location.

5. Public Involvement.

MDA will make diligent efforts to involve the public in preparing and implementing its NEPA procedures in accordance with 40 CFR 1501.4(b), 1506.6 and part 1503. When developing a plan to include the public and affected parties in the environmental analysis process, MDA will consider the following factors: (1) the magnitude of the environmental considerations associated with the proposed action; (2) the extent of expected public interest; and (3) any relevant questions of national concern.

6. Environmental Review Categories.

A proposed action may fall into these five broad categories for environmental review:

(a) Exemption by law. To use an exemption by law, the law must apply to MDA and must prohibit, exempt, or make impossible full compliance with NEPA.

(b) Emergencies. If an emergency requires MDA to take immediate actions for national defense or security or to protect life or property, the following provisions apply. (1) The responsible official may take actions necessary to control the immediate impacts of the emergency and are urgently needed to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the responsible official must take into account the probable environmental consequences of the emergency action and

mitigate foreseeable adverse environmental effects to the extent practical. (2) For emergency actions other than those actions in paragraph (b)(1), if the responsible official responding to the emergency and the Environmental Management Division jointly conclude the emergency actions qualify for a CATEX and do not involve extraordinary circumstances that prevent using a CATEX as defined in these procedures, no further analysis is required to comply with NEPA before proceeding with emergency actions. The Environmental Management Division will prepare a Record of Environmental Consideration (REC) to document this conclusion. (3) If the responsible official proposes emergency actions other than those in paragraph (b)(1), and the actions do not qualify for a CATEX but will not likely have significant environmental impacts, MDA will document that determination in an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared in accordance with these procedures. If the responsible official determines that the proposed emergency actions must be undertaken before preparing an EA and FONSI, the Chief, Environmental Management will consult with the MDA EE about alternative arrangements for NEPA compliance. The EE may grant emergency alternative arrangements that meet the intent of NEPA, to the extent possible. To the maximum extent practical, these alternative arrangements will ensure public notification and involvement. They will focus on minimizing the adverse environmental consequences of the MDA response action and emergency. Any alternative arrangements must be documented. The Chief, Environmental Management will inform the Council on Environmental Quality (CEQ) of these arrangements at the earliest opportunity. (4) If the responsible official proposes emergency actions other than those in paragraph (b)(1) and those actions are likely to have significant environmental

impacts, then the Chief, Environmental Management must consult with CEQ about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

(c) Categorical Exclusions (CATEXs). These are categories of Agency actions (listed in Appendix B) that MDA has determined do not individually or cumulatively have a significant impact on the human environment. MDA may use CATEXs for a proposed action when there are no extraordinary circumstances that warrant further analysis in an EA or EIS.

MDA will document designated CATEXs in writing using a REC (Appendix C). An MDA REC is a signed statement submitted with project documentation that concisely documents that an MDA action has received environmental review. The REC briefly describes the proposed action and time period, identifies the MDA proponent and approving official(s), addresses the use of screening criteria, and demonstrates that a review was conducted to ensure that no extraordinary circumstances indicate the need for further analysis. Qualifications for a CATEX are described later in this section.

(d) Environmental Assessment (EA). Proposed MDA actions not covered in the first three categories must be analyzed to determine their potential environmental effects. An EA is used to determine whether to prepare an EIS or a FONSI (40 CFR 1501.4 and 1508.9); however, MDA is not required to prepare an EA if we have decided to prepare an EIS. (See 40 CFR 1501.3(a)). The requirements for the EA are addressed later in these procedures.

(e) Environmental Impact Statement (EIS). When a proposed action has the potential for significant impacts or when an EA cannot support a FONSI, an EIS will be

prepared (40 CFR 1501.4). An EIS is initiated by the notice of intent (NOI) and examines the potential significant environmental effects of the proposed action plus measures to mitigate those impacts. This process requires formal interaction with the public, a formal scoping process, specified timelines for public review of the documentation, and incorporation of public comments as well as any comments made by Federal, State, local, and tribal agencies. Requirements for the EIS are addressed later in these procedures.

7. CATEX.

(a) If the proposed action qualifies as a CATEX and the screening criteria are met, the action can proceed. Appendix B lists MDA's proposed CATEXs. Appendix C shows an MDA REC form to be used to document designated CATEXs.

(b) MDA may use a CATEX only when the following screening criteria are met: (1) the proposed action is a Federal action over which we have primary responsibility and, as described in its entirety, is covered by one or more CATEXs listed in Appendix B; (2) the proposed action does not involve any of the extraordinary circumstances described in paragraph (d) below; and (3) the proposed action does not involve using unproven technology that could potentially result in unknown impacts.

(c) Applying a CATEX to an action does not eliminate the need to meet other statutory or regulatory requirements including general conformity, federally-listed threatened or endangered species or their designated critical habitat, historic and cultural preservation, and safe drinking water requirements or other applicable Federal, state, or local regulatory requirements.

(d) "Extraordinary circumstances" arise when a typically categorically-excluded

action has the reasonable likelihood to result in individually or cumulatively significant impacts on public health, safety, or the environment, based on the specific situation where the CATEX is applied. Extraordinary circumstances that preclude using a CATEX include: (1) a reasonable likelihood the proposed action would result in uncertain, unique, or unknown environmental risks, or is scientifically controversial; (2) a reasonable likelihood the proposed action would establish precedents or commit MDA to future actions with potential for significant impacts; (3) a reasonable likelihood the proposed action would threaten to violate Federal, state, or local environmental laws; (4) a reasonable likelihood the proposed action would adversely affect environmentally sensitive resources, such as, but not limited to, Federally-listed threatened and endangered species, their designated critical habitat, wilderness areas, floodplains, wetlands, aquifer recharge areas, coastal zones, wild and scenic rivers, and significant fish or wildlife habitat, unless the impact was permitted, mitigated, or addressed through another environmental review process, for example, the Clean Water Act or Coastal Zone Management Act; (5) a reasonable likelihood the proposed action would adversely affect known national natural landmarks, or cultural or historic resources, including, but not limited to, property listed on or eligible for the National Register of Historic Places, unless the impact was permitted, mitigated, or addressed through another environmental review process, such as the National Historic Preservation Act; or (6) a reasonable likelihood of causing an increase in surface transportation congestion that would exceed capacity of the supporting infrastructure or otherwise cause significant impacts to the human environment.

- (e) MDA will review its CATEXs at least every seven years to determine

whether modifications, additions, or deletions are appropriate, based on our experience and determination that environmental impacts of certain activities are not significant. If MDA acquires new responsibilities through legislation or administrative restructuring, we may propose new or modified CATEXs after gaining sufficient experience with the new activities to make a reasoned determination that any resulting environmental impacts are not significant. MDA will submit recommendations for modifications, additions, or deletions to CEQ for informal consultation and discussion.

8. Environmental Assessment (EA).

(a) An EA is a concise public document agencies/services prepare to inform decision makers and determine if the proposed action has the potential to significantly impact the environment (which then would require the preparation of an EIS). In cases when no potentially significant impact is expected, an agency/service documents this determination with a FONSI. An EA may be prepared at any time to help agencies/services plan and make decisions. Typical MDA actions normally requiring an EA include: (1) new construction of facilities that involves more than five cumulative acres of new surface disturbance; (2) proposed actions that potentially result in significant changes to established land use; or (3) actions substantially altering ongoing MDA operations which could potentially lead directly, indirectly, or cumulatively to substantial environmental impacts.

(b) An EA is prepared to assess the extent of potential environmental impacts resulting from a proposed action and alternatives, and to determine whether or not the impacts are likely to be significant. The EA must include, at a minimum, the following information and analyses: (1) purpose and need for the proposed action or activity;

(2) description of the proposed action; (3) brief discussion of the alternatives considered, including the “no action” alternative and the “proposed action;” (4) brief discussion of the affected environment and region of influence; (5) analysis of the potential environmental impacts of the proposed action and alternatives; (6) list of preparers, agencies and persons consulted; and (7) references.

(c) The analysis of potential environmental impacts (item (b)(5) above) includes an assessment of the direct, indirect, and cumulative impacts that can reasonably be expected from taking the proposed action or reasonable alternatives. When there are direct or indirect effects on an aspect of the environment from the proposed action, then MDA must also consider cumulative effects. Cumulative effects are impacts on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Actions by Federal agencies, non-Federal agencies and private parties must be included when considering cumulative effects, as specified in 40 CFR 1508.7.

(d) The analysis for an EA leads to a determination to either issue a FONSI or a NOI to prepare an EIS.

(e) MDA should coordinate preparing the EA with other agencies (e.g., Federal, state, local, or tribal governments) when the action involves resources they manage or protect. MDA may invite agencies with jurisdiction by law and with special expertise, to participate as cooperating agencies (40 CFR 1501.6, 1508.5, 1508.15, and 1508.26). Factors for determining whether to invite, decline, or end cooperating agency status are in Attachment 1 of the CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental

Policy Act (January 30, 2002).

(f) MDA may request public involvement in preparing the EA or revising or supplementing the EA, or choose to involve the public after the EA is prepared. MDA may use scoping but, would not publish the notice in the FR unless the proposed action was of national interest. MDA will select the type and format for public involvement to best support on-time and meaningful public input and coordinate it with the host range/installation where applicable.

9. Finding of No Significant Impact (FONSI).

(a) MDA will prepare a FONSI as specified in 40 CFR 1508.13 to briefly describe why a proposed action will not have a significant effect on the environment and thus will not require an EIS.

(b) MDA will make the proposed final EA and proposed FONSI available to the affected public, organizations, and individuals requesting them, and to whomever we have reason to believe is interested in the action through the various methods outlined in 40 CFR 1506.6 as we deem appropriate. The public, other Federal, tribal, and state agencies and other government entities will be given an opportunity to review and comment on the proposed final EA and unsigned FONSI. The time period for public review will reflect the magnitude of the proposed action and its potential for controversy about environmental effects. A 30-day public review is normal, unless it is unwarranted due to the limited scope of the proposed action and/or lack of potential controversy about environmental effects. MDA will make EAs and FONSIIs available on our public website and provide an electronic copy upon request. When MDA determines that it will enhance the opportunity for public review, we will provide hard copies to local public libraries or

other public depositories.

(c) After closure of the public review period and considering the comments received, the MDA Environmental Executive will determine whether to revise the EA, sign the FONSI, start preparing an EIS, or modify or stop considering the proposed action.

(d) MDA will make the final EA and signed FONSI available on our public website.

10. Environmental Impact Statement (EIS).

(a) Classes of activities that normally require an EIS (40 CFR 1501.4) are:

- (1) construction and operations of a major new deployment site or test range, and
- (2) development, testing and employment of a major new missile defense technology with unknown or potentially significant effects on the environment.

(b) A draft and final EIS will include: (1) the purpose and need for the proposed action and reasonable alternatives (as specified in 40 CFR 1502.13); (2) reasonable alternatives, including the preferred alternative and no-action alternative and designation of the preferred alternative (as specified in 40 CFR 1502.14); (3) the environment affected or created by the alternatives (as specified in 40 CFR 1502.15); (4) the probable environmental impacts from alternatives including the proposed action and measures (if any) to minimize impacts (as specified in 40 CFR 1502.16); and (5) a list of the major preparers of the EIS (as specified in 40 CFR 1502.17). EIS scope and detail should be reasonably related to the scope and the probable environmental impacts of the proposed action and alternative actions (40 CFR part 1502).

(c) Once MDA decides to prepare an EIS, we will start scoping (as specified in

40 CFR 1501.7). During scoping, participants help identify the range of actions, alternatives and impacts to consider (40 CFR 1508.25). MDA will invite affected agencies and interested persons to help determine the significant issues and alternatives to be addressed. The scoping phase of the NEPA process, as part of project planning, will include identifying aspects of the proposal that may have a significant effect or involve controversy concerning environmental effects. Scoping will ensure the NEPA analyses are useful for the decision maker.

(d) As soon as practical after deciding to prepare an EIS and before scoping, MDA will publish a notice of intent (NOI) to prepare an EIS in the FR (as specified in 40 CFR 1501.7). This NOI (as specified in 40 CFR 1508.22) will describe the purpose and need for the proposed action, and any reasonable alternatives and potential environmental impacts associated with the action that are available at this early stage of the NEPA process. Those impacts that tentatively are determined not to be significant and not warrant discussion in detail in the EIS may be identified. If a public scoping meeting will be held, the notice will state when and where. The NOI will identify the MDA point of contact who can supply more information about the action and to whom comments should be sent. There will normally be a public input period of 30 days from the date of publication of the NOI in the FR to allow other interested agencies and the public an opportunity to review and comment. Based on input received, MDA will determine if any additions or modifications to the schedule or scope of the EIS are appropriate. MDA will consider, in scoping the NEPA analysis and developing a draft EIS, the extent to which the greenhouse gas emissions caused by a proposed action should be estimated and evaluated.

(e) Analyzing potential environmental impacts includes assessing the direct, indirect, and cumulative impacts that can reasonably be expected from taking the proposed action or reasonable alternatives. When there are direct or indirect effects on an aspect of the environment, then MDA must also consider cumulative effects. Cumulative effects are impacts on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Actions by Federal and non-federal agencies and private parties must be included when considering cumulative effects (as specified in 40 CFR 1508.7).

(f) MDA should coordinate preparing the EIS with other agencies when the action involves resources they manage or protect. MDA generally will invite those agencies with jurisdiction by law to participate as cooperating agencies. MDA may also invite them if they lack such jurisdiction, in addition to other agencies with special expertise, as cooperating agencies (40 CFR 1501.6 and 1508.5). Factors for determining whether to invite, decline, or end cooperating agency status are in Attachment 1 of the CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (January 30, 2002).

10.1 Draft Environmental Impact Statement (DEIS).

(a) MDA will prepare a draft environmental impact statement (DEIS) (as specified in 40 CFR 1502.9) in the format recommended in the CEQ regulations at 40 CFR 1502.10 unless there is a compelling reason to use another format.

(b) MDA will electronically file the DEIS with the Environmental Protection

Agency (EPA) and request comments from any Federal agency that has jurisdiction by law, the public, native American tribes, or other interested Federal, state, and local agencies (as specified in 40 CFR 1503.1). MDA will provide a minimum of 45 days for public comment on the DIES. The comment period will begin on the day of publication of the EPA-issued Notice of Availability (NOA) in the FR (40 CFR 1506.10).

10.2 Final Environmental Impact Statements (FEIS).

After MDA internal approval, we will circulate the final environmental impact statement (FEIS) (as specified in 40 CFR 1502.19). MDA will transmit the FEIS to every person, organization, or agency from which we received substantive comments on the draft and file the FEIS electronically with the EPA (40 CFR 1506.9).

11. Record of Decision (ROD).

(a) After filing the FEIS with the EPA, a ROD will be prepared (as specified in 40 CFR 1505.2) unless MDA announces that we are withdrawing the proposed action.

(b) MDA will make the ROD available on the MDA public website. MDA will also make the ROD available to the public through the various methods outlined in 40 CFR 1506.6, as appropriate.

(c) An action for which an EIS was approved will not start until: (1) 30 days after the EPA-issued notice of availability (NOA) that the final EIS was published in the FR; or (2) 90 days after the DEIS NOA was published in the FR by the EPA, whichever provides the public with the most notice.

12. Memorandum for Record (MFR).

When MDA reviews actions covered in an existing EA or EIS that we prepared, we may write a memorandum for record (MFR) to document that review. When MDA is

a cooperating agency in preparing an EIS, we may adopt the lead agency's EIS without recirculating the EIS as a draft or as a final EIS. MDA may do this when, after an independent review, we conclude and document in an MFR that the lead agency adequately addressed the adopting agency's comments and suggestions. Similarly, when MDA is a cooperating agency in preparing an EA, we may adopt the EA without recirculating the EA when, after an independent review, we conclude and document in an MFR that the lead agency adequately addressed the adopting agency's comments and suggestions (CEQ Guidance Memorandum for Heads of Federal Department and Agencies: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act, March 6, 2012; 40 CFR 1506.3).

13. Administrative Record.

MDA must maintain the administrative record for the environmental analysis performed. The administrative record must be retained by MDA for seven years after completing the action, unless the action involves controversy concerning environmental effects or is of a nature that warrants keeping it longer. The administrative record includes all supporting documents and information used to make the decision. This administrative record should include, but is not limited to: (1) maps and or documents relevant to developing an EA or EIS; (2) formal communication by a consulting or coordinating agency office; (3) studies and inventories of affected environmental resources; (4) correspondence with regulatory agencies; (5) correspondence with and comments from, private citizens, tribes, local governments, and other individuals and agencies contacted during public involvement; and (6) confirmation of publications and transcripts of any public hearing. MDA will prepare and maintain an index or table of

contents for the administrative record.

14. Mitigation and Monitoring.

(a) MDA will indicate whether mitigation measures (as described in 40 CFR 1508.20) will be implemented for the alternative selected in either the FONSI or ROD, what commitments MDA considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) Where possible and appropriate because of amount, MDA will include the cost of mitigation as a line item in the budget for a proposed project. Upon request, MDA will also make the results of mitigation monitoring available to the public.

(c) MDA may “mitigate to insignificance” potentially significant environmental impacts found during preparation of an EA, instead of preparing an EIS. The FONSI for the EA will include these mitigation measures, which will be carried out as the project is implemented. If, for any reason, MDA later abandons or does not meet the mitigation commitments upon which the FONSI relied, we will prepare a supplemental environmental document before continuing the project. If potentially significant environmental impacts might result from any project revisions, MDA will prepare an EIS if we used an EA for the decision to proceed, or we will prepare a supplemental EIS, if we used an EIS for the decision to proceed.

15. Supplemental EAs or EISs.

(a) MDA will prepare a supplement to an EA or EIS in accordance with 40 CFR 1502.9(c), when there are substantial or significant new circumstances or information related to the proposed action, or to the environmental concerns of the proposed actions, which bear on the proposed action or its impacts. MDA may also prepare a supplement

when the purposes of NEPA will be furthered by doing so.

(b) MDA prepares supplemental documents following the same general process as the original EA or EIS. No new scoping is required for a supplemental EIS; however, we may choose to conduct scoping (40 CFR 1502.9(c)(4)).

(c) When a supplemental EA or EIS is prepared, MDA will issue a new FONSI or ROD as appropriate.

16. Cooperating Agencies.

When MDA is the lead agency (40 CFR 1501.5), we will invite Federal agencies with jurisdiction by law to serve as cooperating agencies. MDA may invite Federal, tribal, state and local agencies with special expertise to serve as cooperating agencies. The roles of lead and cooperating agencies are found in 40 CFR 1501.5, 1501.6, and 1508.5, and the definitions of jurisdiction by law and special expertise are found at 40 CFR 1508.15 and 1508.5.

17. Adoption of EA or EIS.

The MDA may adopt an EA or EIS, or portion thereof, prepared by another agency where the MDA proposed action is substantially the same as the action described in the EA, in accordance with CEQ Guidance Memorandum for Heads of Federal Departments and Agencies: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act, March 6, 2012, or EIS, in accordance with 40 CFR 1506.3(b). MDA will independently review the EA or EIS and determine whether it is current, satisfies the requirements of NEPA, and covers the proposed action. If the actions covered by the original NEPA analysis and the MDA proposed action are substantially the same, and MDA was not a cooperating agency, then

we will reissue the EA or EIS as a final document and prepare its own FONSI or ROD, as appropriate.

18. Incorporation by Reference.

MDA will incorporate material by reference to reduce paperwork and bulk. MDA will incorporate previous NEPA analyses or relevant material in an EA or EIS by citing and briefly describing the material, and ensuring that any material incorporated by reference will be made reasonably available for inspection by potentially interested persons within the time allowed for comment either in the EA, EIS, or on our website as specified in 40 CFR 1502.21.

19. Tiering.

MDA will use tiered environmental documents to eliminate repetitive discussions of the same issues and to focus on those issues relating to specific MDA actions (40 CFR 1502.20 and 1508.28). If MDA adopts another Federal agency's environmental document, we may also tier our subsequent MDA environmental documents from the adopted document.

20. Classified Actions.

(a) Classification of an action for national security does not relieve MDA from the requirements of NEPA. MDA will prepare, safeguard, and disseminate NEPA documents in accordance with MDA and DoD requirements for classified information (i.e., MDA Manual 5200.02-M "Information Security Program," DoD Manual 5200.01 "DoD Information Security Program," or current issuance).

(b) In accordance with DoD and MDA Security Policy, NEPA documents that

include classified information/actions will be written so that the classified information/actions are included in separate appendix(es) so that the unclassified portions of the documents can be made available to the public.

(c) When classified information is such an integral part of the analysis of a proposal that MDA cannot produce a meaningful unclassified NEPA analysis, the MDA proponent, in consultation with the appropriate environmental offices, will form a team to review the classified NEPA analysis. This team will include environmental professionals to ensure the consideration of environmental effects is consistent with the letter and intent of NEPA, including public participation requirements for unclassified aspects.

21. Actions Occurring on Host Installations or Ranges.

MDA as a tenant will work with the host agency/service to fulfill MDA and the host's implementing regulations (or procedures) and guidance in complying with NEPA and related Executive Orders. The specific requirements of the agency/service making a decision supported by the NEPA analysis and documentation will apply. If multiple agencies will use the NEPA analysis and documentation, then the process followed in developing it will comply with the most stringent requirement in the respective NEPA implementing procedures and regulations.

APPENDIX A

ABBREVIATIONS AND ACRONYMS

ACM	Asbestos-containing material
ANSI	American National Standards Institute
BMDS	Ballistic Missile Defense System
CATEX	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DEIS	Draft Environmental Impact Statement
DPF	Facilities, Military Construction, & Environmental Management Division
EA	Environmental Assessment
EE	Environmental Executive
EIS	Environmental Impact Statement
E.O.	Executive Order
EPA	Environmental Protection Agency
FEIS	Final Environmental Impact Assessment
FR	Federal Register
FONSI	Finding of No Significant Impact
IEEE	Institute of Electrical and Electronics Engineers
LBP	Lead-based paint
MDA	Missile Defense Agency
MFR	Memorandum for Record
NEPA	National Environmental Policy Act

NOA	Notice of Availability
NOI	Notice of Intent
OSHA	Occupational Safety and Health Administration
PCB	Polychlorinated biphenyl
RCRA	Resource Conservation and Recovery Act
REC	Record of Environmental Consideration
ROD	Record of Decision
SPCC	Spill Prevention, Control and Countermeasure
U.S.C.	United State Code

APPENDIX B

CATEGORICAL EXCLUSIONS (CATEXs)

Actions categorically excluded in the absence of extraordinary circumstances are listed below.

CATEX List:

- B-1. Normal personnel, fiscal or budgeting, and administrative activities and decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and recordkeeping).
- B-2. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents including those that implement without substantial change the regulations, instructions, directives, or guidance documents from higher headquarters or other Federal agencies.
- B-3. Decreases, increases, relocation, and realignment of personnel into existing Federally-owned or commercially-leased space that does not involve a substantial change affecting the supporting infrastructure or use of space (e.g., no increase in traffic beyond the capacity of the supporting network to accommodate such an increase).
- B-4. Routine procurement of goods and services conducted in accordance with applicable procurement regulations, Executive Orders, and policies to support operations and infrastructure, including routine utility services and contracts.
- B-5. Administrative study efforts involving no commitment of resources other than personnel and funding allocations. If any of these study efforts result in

proposals for further action, those proposals must be considered separately by an appropriate CATEX or NEPA analysis. Examples include, but are not limited to: studies to further administrative, personnel-related, architectural, engineering, safety, security, siting, and facility audit activities.

B-6. Studies, monitoring, data and sample collection, and information gathering that involve no permanent physical change to the environment. If any of these activities result in proposals for further action, those proposals must be considered by an appropriate CATEX or NEPA analysis. Examples include, but are not limited to:

- a. Surveys for threatened and endangered species, wildlife and wildlife habitat, historic properties and archeological sites; wetland delineations; minimal water, air, waste, material, and soil sampling (e.g., grab samples).
- b. Vulnerability, risk, and structural integrity assessments of infrastructure.
- c. Environmental Baseline Surveys or Environmental Condition of Property Surveys.
- d. Topographical surveying and mapping that does not require cutting and/or removal of trees.

B-7. Sampling, well drilling and installation, analytical testing, site preparation, and minimally intrusive physical testing. These activities could involve minor clearing and grubbing or movement of heavy equipment such as drill rigs. If any of these actions result in proposals for further actions, those proposals must be considered by an appropriate CATEX or NEPA analysis. Examples include, but are not limited to:

- a. Sampling for asbestos-containing materials (ACMs), polychlorinated biphenyls (PCBs), and lead-based paint (LBP).
- b. Topographical surveys and surveys for unexploded ordnance.
- c. Minimally-intrusive geological, geophysical surveys, geo-technical activities, and seismic studies.
- d. Minimally-intrusive sampling to determine if hazardous wastes, contaminants, pollutants, or special hazards are present.
- e. Ground water monitoring wells, subsurface soil sampling, and soil borings (REC required).

B-8. Immediate response to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention, Control, and Countermeasure (SPCC) Plan or Spill Contingency Plan, or that is otherwise consistent with the requirements of the EPA National Contingency Plan.

B-9. Temporary use of transportable power generators or operational support equipment when located in a previously disturbed area and when operated in compliance with applicable regulatory requirements.

B-10. Routine movement, handling, use, and distribution of materials, including hazardous materials or wastes moved, handled, or distributed in accordance with applicable regulations, such as the Resource Conservation and Recovery Act (RCRA), Occupational Safety and Health Administration (OSHA), and Hazardous Materials Transportation Act (HMTA).

- B-11. Routine movement of mobile test assets (such as ships, aircraft, mobile sensors, telemetry, etc.) for routine missile defense test and evaluation; repair, overhaul or maintenance; or home port reassignments where no new support facilities are required.
- B-12. Activities and operations to be conducted in an existing non-historic structure which are within the scope of and are compatible with the present functional use of the building, will not cause a substantial increase in waste discharged to the environment, will not result in substantially different waste discharges from current or previous activities, and emissions will remain within established permit limits, if any.
- B-13. Acquisition, installation, modification, routine repair and replacement, and operation of utility (e.g., water, sewer, and electrical) and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing rights-of-way, easements, distribution systems, facilities, or previously disturbed land (REC required).
- B-14. Acquisition, installation or minor relocation, operation and maintenance, or evaluation of physical security devices or controls to protect human or animal life and to enhance the physical security of existing critical assets in compliance with applicable Federal, tribal, state and local requirements to protect the environment. Examples include, but are not limited to:
- a. Motion detection systems.
 - b. Raptor electrocution prevention devices.
 - c. Lighting.

- d. Remote video surveillance systems.
- e. Access controls.
- f. Physical barriers, fences, grating, on or adjacent to existing facilities (REC required).

B-15. Maintenance of archaeological, historical, and endangered or threatened species avoidance markers, fencing, and signs.

B-16. Road or trail construction and repair on existing rights-of-ways or in previously disturbed areas which do not result in a change in functional use. Runoff, erosion, and sedimentation are controlled through implementation of best management practices (REC required).

B-17. Routine repair and maintenance of buildings, vessels, aircraft, grounds, and other facilities and equipment which do not result in a change in functional use or a significant impact on a historically significant element or setting. Examples include, but are not limited to: repair of roofs, doors, windows, or fixtures, localized pest management, and minor erosion control measures.

B-18. New construction or equipment installation or alterations (interior and exterior) to or construction of an addition to an existing structure that is similar to existing land use if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. The following conditions must be met:

- a. The structure and proposed use are compatible with applicable Federal, tribal, state, and local planning and zoning standards.
- b. The site and scale of construction or improvement is consistent with those of existing, adjacent, or nearby buildings.

- c. The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, sewer, water, parking, etc.).

This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste or hazardous waste (REC required).

B-19. Demolition of non-historic buildings, structures, or other improvements and repairs that result in disposal of debris there-from, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of ACM, PCBs, LBP, and other special hazard items (REC required).

B-20. Research, testing, and operations conducted at existing facilities and plants or laboratories (including contractor-operated laboratories and plants) and in compliance with all applicable safety, environmental, and natural conservation laws. Examples include, but are not limited to: wind tunnels, high-energy lasers, remote-sensing instruments, vacuum chambers, high-altitude simulator facilities, and propellant testing facilities.

B-21. Routine installation and use of radars, telemetry systems, communications equipment, and other essentially similar facilities and equipment within a launch facility, mobile platform, military installation, training area, or previously disturbed area that conform to current American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) guidelines for maximum permissible exposure to electromagnetic fields (REC required).



APPENDIX C

DRAFT MISSILE DEFENSE AGENCY RECORD OF ENVIRONMENTAL CONSIDERATION

MDA REC
Tracking Number:

INSTRUCTIONS: *Top section to be completed by Proponent; continue on separate sheets as necessary.*

Title of Proposed Action:

Purpose and Need for Action (*identify decision to be made*):

Description of Proposed Action and Alternative (*provide sufficient detail for evaluation of the total action, including total acreage, clearing requirements, etc.*):

Anticipated Start Date:

Duration of the Proposed Action:

Signature: _____ Date: _____
Proposed Action Proponent

To Be Completed by MDA Environmental Management

Environmental Analysis Determination. MDA has determined the proposed action:

1. ☐ Qualifies for a Categorical Exclusion (CATEX) – See Attachment 1, MDA Environmental “Screening Checklist
CATEX #:
2. ☐ Does not qualify for a CATEX: Further Environmental Analysis is required

List Applicable NEPA Documents:

Remarks:

Signature: _____ Date: _____
MDA Environmental Officer

Attachment 1
MDA Environmental Screening

A CATEX excludes a proposed action from further NEPA analysis. Do not use a CATEX if any of the following conditions are YES or UNKNOWN:

YES	NO	UNKNOWN	Description of the Reasonable Likelihood of the Proposed Action's Effect
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. Significant impact on public health or safety?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2. Imposes uncertain, unique, or unknown environmental risks, or is scientifically controversial?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3. Establishes precedents or makes decisions in principle for future actions that have the potential for significant impacts?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	4. Threatens a violation of Federal, state, or local environmental laws?
			5. Involves an action that, as determined in coordination with the appropriate resource agency, may:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a) Have an adverse effect on Federally listed endangered/threatened species or marine mammals or their designated critical habitat?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b) Have an adverse effect on coral reefs or Federally designated wilderness areas, wildlife refuges, marine sanctuaries, or parklands?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c) Adversely affect the size, function, or biological value of wetlands and is not covered by a nationwide or regional permit?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d) Have an adverse effect on archaeological resources or resources (including but not limited to ships, aircraft, vessels, and equipment) listed or determined eligible for listing on the National Register of Historic Places?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e) Result in an uncontrolled or unpermitted release of hazardous substances or require a conformity determination under standards of the Clean Air Act General Conformity Rule?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f) Have an adverse effect on water resources such as quality, quantity, floodplains, buffer zones, surface water, or ground water?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6. Impacts other resources not addressed above (i.e., Installation Resource Program, soils, geology, hazardous material/waste, or land use)?
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7. Causes an increase in transportation congestion that will exceed capacity of the supporting infrastructure?